REMARKS

Claims 1-33 remain in connection with the present application.

PRIOR ART REJECTION

Claim 1-33 were rejected under 35 U.S.C. §103 as being unpatentable over "Official Notice" of an alleged well-known process called "renting with the option to buy" in view of the publication by David Kovaka entitled "Plaza Personnel Bought After Gradual Changeover" (hereafter Kovaka). This rejection is respectfully traversed.

CHALLENGE TO OFFICIAL NOTICE

The Examiner takes Official Notice with respect to each of claims 1, 11, 12, 23, 25, 26, 30, and 33 with regard to an alleged well-known process called "renting with the option to buy." Applicants respectfully challenge the Examiner's taking of Official Notice and respectfully request the Examiner to provide a reference documenting the Examiner's allegations.

CLAIM LIMITATIONS LACKING

As stated above, the Examiner rejects many of the claims of the present application over Official Notice of an alleged well-known process called "renting with the option to buy," hereafter "renting with the option to buy." The Examiner not only takes Official Notice of this, but further attempts to combine this alleged process with Kovaka. Basically, the Examiner alleges that "renting with the option to buy" teaches all the limitations of the various claims, except for the aspect of "selecting a candidate to serve as a manager of the business" and "leading to owning the business."

The Examiner alleges that Kovaka teaches selecting someone who would eventually buy the business, and alleges that it would have been obvious to to

have included selecting a candidate to serve as a manager of the business and leading to owning the business, because such a modification would be an incentive to attract an exceptional manager.

Not only do Applicants disagree that there would be any motivation to combine the teachings of Kovaka with those of the Examiner's alleged Official Notice of "renting with the option to buy," and further believe that there is no support or evidence regarding the Examiner's alleged motivation, but Applicants further believe that even assuming *arguendo* that Kovaka could be combined with the Examiner's alleged Official Notice of "renting with the option to buy," the alleged combination would still fail to render claim 1 obvious for at least the following reasons.

First of all, Applicants respectfully submit that the process of "renting with the option to buy" is clearly different from the method set forth in claim 1, for reasons in addition to those allegedly made up for by the teachings of Kovaka. As Applicants understand it, in the "renting with the option to buy" process, while an eventual purchase price or purchase option may be set so that a person can first rent some furniture and later buy the furniture for example, the rent to own process charges **money in addition to the basic "purchase price."** Thus, with respect to claim 1 of the present application, Applicants respectfully submit that the Examiner's alleged combination of Official Notice of "renting with the option to buy" and Kovaka still fail to teach or suggest at least "allowing for the ***reduction*** of the initial purchase price and/or franchise fee," let alone any reduction "based on discounts earned by the manager."

As Applicants understand, in a "renting with the option to buy" process,

there may be a purchase price set, **but that price is never reduced**. Instead, **it is increased** when taking into consideration the various rent payments made. There is **no teaching or suggestion in the "renting with the option to buy" process** for any type of **allowance for a reduction**. Similarly, Kovaka, even assuming *arguendo* that it could be combined with the "renting with the option to buy" process (which is not admitted), would still fail to make up for at least such a deficiency.

In **Applicants' method**, not only is a candidate selected as a manager of the business, but the manager **may earn discounts on the purchase price** ... before the manager can purchase the business. At least such an aspect of claim 1 is not taught or suggested by the Examiner's alleged "rent with the option to buy" process, taken singularly or in combination with Kovaka.

With regard to independent claim 14 of the present application, although limitations set forth in the claim are different from that of claim 1 and although claim 14 (and all claims) should be interpreted solely based upon its own limitations contained therein, claim 14 still sets forth an aspect of allowing for reduction of cost of purchasing the business, namely "providing incentives the manager for allowing for the reduction of cost of purchasing the business based on discounts earned during the predetermined amount of time." At least such a limitation is not taught or suggested by the alleged reference combination, even assuming *arguendo* that they could be combined.

With respect to claim 25, Applicants respectfully suggest that the alleged reference combination fails to teach or suggest at least "providing for the reduction of the purchase price of the business based on the bonuses and/or the discounts that are earned." With regard to claim 26, Applicants

respectfully suggest that the alleged reference combination fails to teach or suggest at least "providing incentives to the manager to earn discounts that can be applied toward the purchase of the business." Further, with regard to claim 33, Applicants respectfully suggest that the alleged reference combination fails to teach or suggest at least "providing for the reduction of the purchase price of the business based on the bonuses and/or discounts that are earned." Thus, with regard to the various independent claims of the present application, even assuming *arguendo* that the references could be combined, Applicants respectfully submit that the alleged combination of references would fail to render each of the claims obvious.

With regard to claim 30, this claim is also different from the "renting with the option to buy" process alleged by the Examiner, taken alone or in combination with Kovaka. In the "rent with the option to buy" process, an initial purchase price may be set, but if the person does not have the money to buy the device which he desires to purchase, then he must rent the device by paying installments. A small portion of the rental installments goes towards the principal or the initial purchase price, but a large portion of the installment is merely money which is paid in addition to the purchase price. Eventually, if the user continues to rent, then he may own the device, but for a price much larger than that of the initial purchase price.

Contrary to this aspect of the "renting with the option to buy" process as set forth by the Examiner, taken either singly or in combination with Kovaka, the method of claim 30 sets a predetermined amount of time before purchase and determines and sets the purchase price to the business in advance of the predetermined amount of time. Thereafter, the cost of purchasing the

business "is based on the purchase price that has been set in advance." Thus, unlike the rent to own process, the cost of purchasing the business set forth in claim 33 is **based upon the purchase price set in advance, and not a cost which is much higher than that initial purchase price**, as is the case in the "renting with the option to buy" process.

Accordingly, Applicants respectfully submit that claim 30 is allowable over the alleged combination of references set forth by the Examiner, even assuming *arguendo* that they could be combined.

Further, Applicants respectfully submit that claim 32 is also even further allowable over the alleged combination of references. Claim 32 is dependent upon claim 30, and further sets forth that the manager can earn discounts that can be applied toward the purchase price **to reduce the cost of purchase**, an aspect which is not taught or suggested by the alleged reference combination for the reasons set forth above with regard to many of the independent claims of the present application. Accordingly, Applicants respectfully submit that claim 32 is further allowable over the prior art of record, even assuming *arguendo* that the references could be combined.

LACK OF MOTIVATION

In addition, Applicants respectfully submit that the Examiner has not provided proper motivation for combining the "rent with the option to buy" process, and the teachings of Kovaka.

In re Dembiczak, 175 F.3d. 994 (Fed. Cir. 1999), the Federal Circuit set forth rigorous requirements for establishing a *prima facie* case of

obviousness under 35 U.S.C. §103(a). According to *Dembiczak*, in combining references under 35 U.S.C. §103(a), the Examiner must show evidence of some suggestion, teaching or motivation to combine prior art references to avoid "hindsight-based obviousness analysis" *Id.* at 999. This evidence may flow from (1) the prior art references themselves, (2) the knowledge of one of ordinary skill in the art at the time the invention was made, or (3) from the nature of the problem to be solved. *Id.*

The Examiner merely picks and chooses pieces of the prior art in an attempt to meet Applicants' claim limitations, without providing any teaching, suggestion, or motivation for combining these references. In order to establish a prima facie case of obviousness under 35 U.S.C. §103(a), however, the Examiner must provide particular findings as to why the two pieces of prior art are combinable. See Dembiczak 50 USPQ2d at 1617. **Broad conclusory statements standing alone are not "evidence".**

The Examiner recognizes deficiencies in the "renting with the option to buy" process and then merely selects the Kovaka publication, which allegedly mentions someone being brought on board to own a business, and arbitrarily attempts to combine its teachings with the "renting with the option to buy" process. The alleged "renting with the option to buy" process set forth by the Examiner (although not provided in any publication through the taking of Official Notice by the Examiner, which has been challenged by the Applicants) allegedly deals with renting and then later purchasing a product. However, Kovaka has nothing to do with this process and merely discusses bringing or selecting someone on board to eventually buy a business. **The teachings are completely diverse** and there is no motivation for combining these teachings

except with the use of Applicants' own disclosure, in hindsight.

Such a use of Applicants' disclosure, in hindsight is not permitted. Instead, the Examiner must provide independent motivation, teaching, or suggestion for combining of the references, and must provide evidence of this motivation. Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight. Dembiczak, 50 USPQ2d at 1617. Accordingly, Applicants respectfully submit that the claims are allowable for at least this additional reason.

The Examiner has not provided proper motivation, teachings, or suggestions for combining of the references, and has merely used Applicants' disclosure as evidence for combining the references, which is an improper use of hindsight. In an attempt at providing motivation, the Examiner alleges that the motivation for combining the references **would be an incentive to attracting an exceptional manager**. Such alleged motivation is merely a **broad conclusory statement** created by the Examiner and does not suffice for combining the alleged teachings of the references (See Dembiczak 50 USPQ2d at 1617). The Examiner did not and cannot explain **why** it would even be an incentive to combine the teachings of a "renting with the option to buy" process with those of Kovaka to attract an exceptional manager; and more importantly **cannot provide any evidence** of this alleged motivation. The "renting with the option to buy" process **has nothing to do with attracting a manager**, and thus proper motivation for combining the alleged references is lacking.

Accordingly, Applicants respectfully suggest that the Examiner has not provided proper motivation for combining the references and thus the rejection is improper. Accordingly, withdrawal of the rejection is respectfully requested.

CONCLUSION

Accordingly, in view of the above remarks, reconsideration of the objections and rejections and allowance of each of claims 1-33 in connection with the present application is earnestly solicited. Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Donald J. Daley at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By _____
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